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International Trade Administration
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Sunset Reviews
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DATE: February 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Second
Sunset Reviews of the Antidumping Duty Orders on
Ferrovanadium from the People's Republic of China and the
Republic of South Africa

Summary

In the sunset reviews of the antidumping duty ("AD") orders covering ferrovanadium from the People's Republic of China ("PRC") and the Republic of South Africa ("South Africa"), Vanadium Producers and Reclaimers Association ("VPRA") and VPRA members Gulf Chemical & Metallurgical Corporation ("Gulf"), Gulf's wholly-owned subsidiary Bear Metallurgical Company ("Bear"), AMG Vanadium, Inc. ("AMGV"), and Evraz Stratcor, Inc. ("Stratcor") (collectively "Domestic Producers"), submitted timely and complete notices of intent to participate as well as substantive responses. No respondent interested party submitted a substantive response. Accordingly, we conducted expedited (120-day) sunset reviews. We recommend adopting the positions described below. The following is a complete list of issues in these sunset reviews for which we received substantive responses:

1. Likelihood of continuation or recurrence of dumping; and
2. Magnitude of the dumping margins likely to prevail.

Background

On November 1, 2013, the Department of Commerce ("Department") published the notice of initiation of the sunset reviews of the AD orders on ferrovanadium from the PRC and South



Africa, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the “Act”).¹ On November 15, 2013, pursuant to 19 CFR 351.218(d)(1), the Department received timely and complete notices of intent to participate in the South African and PRC sunset reviews from the Domestic Producers.² On December 2, 2013, pursuant to 19 CFR 351.218(d)(3), the Domestic Producers filed a timely and adequate substantive response within 30 days after the date of publication of the *Sunset Initiation*.³ The Department received no substantive responses from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the AD orders on ferrovanadium from South Africa and the PRC.

History of the Orders

On November 29, 2002, the Department published its final determinations in the less than fair value (“LTFV”) investigations of ferrovanadium from South Africa and the PRC.⁴ On January 28, 2003, the Department published an amended final determination in the LTFV investigation of ferrovanadium from the PRC and published AD orders on imports of ferrovanadium from South Africa and the PRC.⁵ The Department found the following weighted-average dumping margins in the LTFV investigations:

Exporter/Producer	Weighted-Average Percentage Margin
PRC	
Pangang Group International Economic & Trading Corporation	12.97
PRC–Wide Entity	66.71
South Africa	
Highveld Steel and Vanadium Corporation, Ltd.	116.00
Xstrata South Africa (Proprietary) Limited	116.00
All Others	116.00

¹ See *Initiation of Five-Year (“Sunset”) Review*, 78 FR 65614 (November 1, 2013) (“*Sunset Initiation*”).

² See Letter regarding “Ferrovanadium from the People’s Republic of China,” dated November 15, 2013, and Letter regarding “Ferrovanadium from the Republic of South Africa,” dated November 15, 2013.

³ See Letter regarding “Ferrovanadium from the People’s Republic of China,” dated December 2, 2013 (“Domestic Producer’s PRC substantive response”) and Letter regarding “Ferrovanadium from the Republic of South Africa,” dated December 2, 2013 (“Domestic Producer’s SA substantive response”).

⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People’s Republic of China*, 67 FR 71137 (November 29, 2002) (“*PRC Final Determination*”); see also *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002) (“*South Africa Final Determination*”).

⁵ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Ferrovanadium From the People’s Republic of China*, 68 FR 4168 (January 28, 2003) (“*PRC Amended Final and Order*”); see also *Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa*, 68 FR 4169 (January 28, 2003) (collectively, “*Antidumping Duty Orders*”).

Administrative Reviews and New Shipper Reviews

Since the issuance of the *Antidumping Duty Orders*, there have been no administrative reviews or new shipper reviews of these orders.⁶

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

There have been no scope inquiries, changed circumstances reviews or duty absorption findings in connection with the *Antidumping Duty Orders*.

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the *Antidumping Duty Orders* would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigations and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the *Antidumping Duty Orders*.

As explained in the Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.⁷ In addition, as a base period for import volume comparison, it is the Department’s practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.⁸ In addition, when analyzing import volumes for second and subsequent sunset reviews, the Department’s practice is to compare import volumes during the year preceding initiation of the underlying investigation to import volumes since the issuance of the last continuation notice.

Further, section 752(c)(3) of the Act states that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margin of dumping likely to prevail if the order

⁶ The one administrative review that was initiated with respect to the antidumping duty order on ferrovanadium from South Africa was rescinded. See *Ferrovanadium from South Africa: Notice of Rescission of Antidumping Duty Administrative Review*, 73 FR 24949 (May 6, 2008).

⁷ See SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 889-90, reprinted at 1994 U.S.C.C.A.N. 4040, 4213-14.

⁸ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

were revoked. Generally, the Department selects the margins from the final determination in the original investigation as the margins of dumping likely to prevail if the order were revoked, as these margins are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.⁹ However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, “if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review.”).¹⁰ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of zero or *de minimis* shall not by itself require the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.¹¹

In the *Final Modification for Reviews*, the Department announced that in five-year (“sunset”) reviews, it will not rely on weighted-average dumping margins that were calculated using the methodology determined by the Appellate Body to be World Trade Organization (WTO)-inconsistent.¹² The Department also noted that “*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations.”¹³ The Department further noted that it does not anticipate that it will need to recalculate the dumping margins in sunset determinations to avoid WTO inconsistency, apart from the “most extraordinary circumstances” provided for in its regulations.¹⁴

Below we address the comments submitted by the Domestic Producers.

1. Likelihood of continuation or recurrence of dumping

Domestic Producers’ Comments

- Policy Bulletin 98.3 states that if imports cease after the order is issued it is reasonable to assume that exporters cannot sell in the United States without dumping and that to reenter the U.S. market they would have to resume dumping.
- Based on this bulletin, the Department should conclude that revocation of the orders would lead to a continuation or recurrence of dumping because imports of subject merchandise ceased after issuance of the order on South Africa and virtually ceased after issuance of the order on the PRC.¹⁵

⁹ See SAA at 890; *see, e.g., Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰ See SAA, at 890-91.

¹¹ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) and accompanying Issues and Decision Memorandum at Comment 1.

¹² See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (“*Final Modification for Reviews*”).

¹³ See *id.* (emphasis added); *see also* 19 CFR 351.218(e)(2).

¹⁴ See *id.*

¹⁵ See Domestic Producer’s PRC substantive response, at 5-6 and Domestic Producer’s SA substantive response, at 5-6.

Department's Position:

As explained in the Legal Framework section above, the Department's determination concerning whether revocation of an AD order is likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report, H. Rep. No. 103-826, pt. 1 (1994) ("House Report")¹⁶; and Senate Report, S. Rep. No. 103-412 (1994)). Consistent with the SAA, the Department will make its likelihood determination on an order-wide basis.¹⁷ Further, when determining whether revocation of an order would likely lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order. Thus, one consideration is whether the Department has continued to find dumping above *de minimis* levels in administrative reviews subsequent to imposition of the AD order.¹⁸ According to the SAA and the House Report, "if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed."¹⁹ For the reasons discussed below, we find that revocation of the *Antidumping Duty Orders* would likely result in the continuation or recurrence of dumping in the United States.

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigations and subsequent proceedings. In the PRC investigation, the Department calculated a weighted-average dumping margin for one mandatory respondent—Pangang Group International Economic & Trading Corporation ("Pangang") of 12.97 percent.²⁰ The Department found that the PRC-wide entity failed to cooperate to the best of its ability and, as adverse facts available ("AFA"), assigned it the dumping margin alleged in the petition, as adjusted by the Department, namely 66.71 percent.²¹

In the South African investigation, the mandatory respondents, Highveld Steel and Vanadium Corporation, Ltd. ("Highveld") and Xstrata South Africa (Proprietary) Limited ("Xstrata"), ceased participating and, as a result, the Department applied an AFA rate of 116.00 percent to Highveld and Xstrata. This was the dumping margin alleged in the petition. Since the petition contained only one estimated weighted-average dumping margin and there were no other respondents in the investigation, the Department also used 116.00 percent as the All-Others rate.²² There have been no reviews of the *Antidumping Duty Orders*. Thus, any entries of subject merchandise into the United States after issuance of the *Antidumping Duty Orders* were assessed at above *de minimis* AD rates.

¹⁶ Reprinted at 1994 U.S.C.C.A.N. 3773.

¹⁷ See SAA, at 879.

¹⁸ See *id.* at 890.

¹⁹ *Id.*; see also House Report, at 63-64.

²⁰ See *PRC Amended Final and Order*, 68 FR at 4168.

²¹ See *id.*; *PRC Final Determination*, 67 FR at 71138-39.

²² See *South Africa Final Determination*, 67 FR at 71136.

Pursuant to section 752(c)(1)(B) of the Act, the Department also considered the volume of imports of the subject merchandise in determining whether revocation of the *Antidumping Duty Orders* is likely to lead to continuation or recurrence of dumping. As discussed above, it is the Department's practice to compare the volume of imports for the one-year period preceding the initiation of the LTFV investigation to the volume of imports after the issuance of the order. Also, as noted above, when analyzing import volumes for second and subsequent sunset reviews, the Department's practice is to compare import volumes during the year preceding initiation of the underlying investigation (calendar year 2000 for these sunset reviews) to import volumes since the issuance of the last continuation notice. The last continuation notice for these sunset reviews was issued in December 2008.²³

Since the issuance of the last continuation notice for these sunset reviews, imports of ferrovanadium into the United States from South Africa under the Harmonized Tariff Schedule of the United States ("HTSUS") number listed in the scope of the *Antidumping Duty Orders* have ceased and the volume of imports of ferrovanadium into the United States from the PRC has declined dramatically compared to imports in the year immediately preceding the initiation of the LTFV investigations (*i.e.*, 2000) and remains below pre-investigation levels.²⁴ We analyzed import volumes for the five calendar years, 2009 through 2013, following the issuance of the PRC and South African continuation notice for the first sunset reviews using U.S. Bureau of Census import statistics which the Domestic Producers obtained from the USITC Dataweb. There have been no U.S. imports of ferrovanadium from South Africa from calendar year 2009 through August 2013 (August is the last month of 2013 for which import data were available when the domestic producers prepared their substantive response).²⁵ As noted above, the SAA explained that the Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other things, imports of the subject merchandise ceased after issuance of the order. The only U.S. imports of ferrovanadium from the PRC during the period January 1, 2009 through August 2013 occurred in calendar year 2010. The volume of these 2010 imports was only 0.11 percent of the total volume of U.S. imports of ferrovanadium from the PRC during calendar year 2000.²⁶ While imports from the PRC have not ceased, record evidence shows significantly lower imports over the five years examined when compared to pre-initiation import volumes. This indicates that PRC exporters may not be able to maintain pre-investigation import levels without selling merchandise at dumped prices.²⁷

Therefore, pursuant to section 752(c)(1) of the Act, because above *de minimis* dumping margins applied to post-order entries of subject merchandise, and the Department found that imports either ceased or were dramatically lower in the five years covered by these sunset reviews in

²³ See *Ferrovanadium from the People's Republic of China and the Republic of South Africa: Continuation of Antidumping Duty Orders*, 73 FR 77609 (December 19, 2008).

²⁴ See Attachment 1 to this memorandum.

²⁵ See *id.*

²⁶ In the year 2000, South Africa exported 591,054 kg and the PRC exported 902,103 kg of ferrovanadium to the United States. See Domestic Producer's PRC substantive response, at Attachment A and Domestic Producer's SA substantive response, at Attachment A; see also Attachment 1 to this memorandum.

²⁷ See, e.g., *Certain Activated Carbon From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 77 FR 33420 (June 6, 2012), and accompanying Issues & Decision Memorandum at Comment 1.

comparison to the import volumes prior to issuance of the *Antidumping Duty Orders*, we find that dumping is likely to continue or recur if the *Antidumping Duty Orders* are revoked.

2. Magnitude of the dumping margins likely to prevail

Domestic Producers' Comments

- The dumping margins calculated in the underlying investigations are the only dumping margins that reflect the behavior of exporters without the discipline of an antidumping order. Thus, the Department should rely on the dumping margins from the investigations as the dumping margins likely to prevail in the event of a revocation of the orders.

Department's Position:

Section 752(c)(3) of the Act provides that the administering authority shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the orders were revoked. Normally, the Department will provide to the ITC the weighted-average dumping margin from the investigation for each company.²⁸ The Department's preference for selecting a rate from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.²⁹ Under certain circumstances, however, we may select a more recently calculated rate to report to the ITC. For companies not investigated individually, or for companies that did not begin shipping until after the order was issued, the Department will normally provide a rate based on the "All-Others" rate from the investigation. The Department considers the PRC to be a non-market economy country under section 771(18) of the Act, and thus the Department does not have an "All-Others" rate in PRC cases. Rather, in PRC cases, instead of an "All-Others" rate, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate.³⁰

As indicated in the "Legal Framework" portion of this memorandum above, the Department's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology that was modified in the *Final Modification for Reviews*.

No administrative reviews of ferrovanadium from South Africa or the PRC have been conducted. Consistent with its practice, the Department has considered the dumping margins from the LTFV investigations to be the best evidence of the exporters' behavior in the absence of an order. The dumping margin for Highveld, Xstrata, and all-other producers and exporters in the South African investigation was based on the dumping margin from the petition and, therefore, does

²⁸ See *Eveready Battery Co., Inc. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

²⁹ See SAA at 890.

³⁰ See *Paper Clips from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order*, 76 FR 26242 (May 6, 2011), and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.107(d).

not include zeroing and thus is consistent with the *Final Modification for Reviews*.³¹ Furthermore, neither the PRC-wide entity rate nor the dumping margin calculated for the one participating mandatory respondent in the PRC investigation includes zeroing and, thus, these dumping margins are also consistent with the *Final Modification for Reviews*.³²

Final Results of Reviews

We determine that revocation of the *Antidumping Duty Orders* would likely lead to continuation or recurrence of dumping. The magnitude of the margin of dumping likely to prevail with respect to imports from South Africa from Highveld, Xstrata and all-other producers and exporters is 116.00 percent. The magnitude of the margin of dumping likely to prevail with respect to Pangang is 12.97 percent, while the magnitude of the margin of dumping likely to prevail with respect to all other exporters of ferrovanadium from the PRC is 66.71 percent.

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of these expedited sunset reviews in the *Federal Register* and notify the ITC of our determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

Date

³¹ See *South Africa Final Determination*, 67 FR at 71136; see, e.g., *Persulfates From the People's Republic of China: Final Results of Expedited Third Sunset Review of Antidumping Duty Order*, 78 FR 40695 (July 8, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

³² See Memorandum to the File regarding Ferrovanadium from the People's Republic of China Sunset Review dated February 28, 2014 and hereby adopted by this memorandum.

Attachment 1

U.S Annual Imports (in kg.) of Ferrovandium from China and South Africa HTSUS 7202920000			
	<i>China</i>	<i>South Africa</i>	<i>Total</i>
2009	0	0	0
2010	1,000	0	1,000
2011	0	0	0
2012	0	0	0
2013	0	0	0

Source of Data: U.S. Department of Commerce, Bureau of Census, as reported by Global Trade Atlas.